

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
Washington, D. C. 20301

Honorable William L. Dawson
Chairman, Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Defense on H. R. 9878, "To amend the Administrative Expenses Act of 1946 to prohibit, except in certain instances, the expenditure of any funds by any executive department or agency of the United States for the acquisition or use of a polygraph (lie detector) machine."

The only exception in the bill to the general prohibition on the purchase or use of the polygraph requires the express authorization of the head or acting head of an executive department or independent agency, with justification for the exception only on the grounds of "extraordinary necessity in protecting the national interest." The authorization to grant the exception is not delegable and each request or use must be justified in writing. Moreover, each authorization must be transmitted promptly to the Speaker of the House and the President of the Senate.

The purpose of H. R. 9878 is to severely limit the use of the polygraph by all agencies of the Federal Government. Under H. R. 9878 any use of the polygraph in the Department of Defense would have to be approved and justified by the Secretary of Defense personally. Since the military departments are not "executive departments" their secretaries would have no authority to permit use of the polygraph. Similarly, defense agencies, such as the National Security Agency, are not "independent agencies" and their heads could therefore not authorize use of the polygraph. Consequently, the entire administrative burden would be thrust upon the Secretary of Defense.

As a result of this stringent limitation on the use of this valuable investigative aid that H. R. 9878 would impose, many criminal and security cases that might be resolved successfully through the use of the polygraph would remain unsolved. Individuals at whom suspicious circumstances have pointed an accusing finger would be denied an opportunity to voluntarily submit to a polygraph examination in an effort to assist in securing their own exculpation. The Department would, in effect, be denied the use of an aid that has proven its value in obtaining accurate factual information essential to determinations of justice and security.

The Department of Defense recognizes that indiscriminate use of and excessive reliance on the polygraph technique must be avoided. It has co-operated fully with the Subcommittee on Foreign Operations and Government Information of the Committee on Government Operations in the Subcommittee's extensive study on the "Use of the Polygraph or 'Lie Detector' by the Federal Government." This study began in June of 1963 and is still not completed.

Partially in response to recommendations regarding use of the polygraph contained in the "Tenth Report by the Committee on Government Operations," dated March 22, 1965, Department of Defense Directive 5210.48 was recently promulgated to guide the conduct of polygraph examinations in this Department. The Chairman of the Subcommittee on Foreign Operations and Government Information has called issuance of the directive a "commendable action."

This new directive incorporates provisions designed to protect the individual's legal and moral rights to avoid self-incrimination and to maintain privacy, while at the same time permitting the judicious employment of the polygraph under carefully prescribed conditions in significant investigations where it is likely to be of unique value as a supplementary investigative aid.

For the reasons stated above, the Department of Defense is opposed to enactment of H. R. 9878.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the Committee.

Sincerely,